

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1226

Bp/s

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
THE UNITED STATES OF AMERICA,

Appellee,

Docket No. T-7286

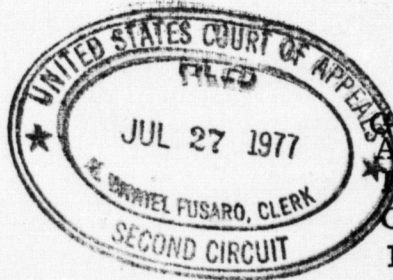
- against -

(District Court Docket
No. 76 Crim. 879-CSH)

HAROLD LANE,

Appellant.
-----X

APPENDIX OF APPELLANT HAROLD LANE



DIANGRANDE & HEROLD, ESQS.
Attorneys for Appellant
HAROLD LANE

Office & P.O. Address
175 Main Street - Suite 300
White Plains, New York 10601

By: J. RADLEY HEROLD, ESQ. of Counsel

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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THE UNITED STATES OF AMERICA,

Appellee,

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- against -

(District Court Docket
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APPENDIX OF APPELLANT HAROLD LANE

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Attorneys for Appellant Harold Lane
Office & P. O. Address
175 Main Street - Suite 300
White Plains, New York 10601

By: J. RADLEY HEROLD, ESQ. of Counsel

LIST OF THE PARTS

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App. 1

PETTY OFFENSE, PO 0208 1 0865 LANE, HAROLD

OTHER MINOR OFFENSE, MO

OTHER MISDEMEANOR, MIS

FELONY, Fel

JUDGE/MAGISTRATE, Assigned

U.S.

VS.

Case Filed Mo 09 08 76 0879

No. of Def's 01

JUVENILE

Yr

Docket No.

U.S. DIST. SECTION

18:641

18:1001

26:7201

OFFENSES CHARGED

Embezzlement of public money.

False statements to U.S. Agency.

Tax evasion.

ORIGINAL COUNTS

1

2-23

24-26

U.S. MAG. CASE NO.

FILE - RELEASE

AMT

Set

10% De

Surety

Collater

3rd Prty Cust

KEY DATES & INTERVALS

ARREST OF

9-8-76

INDICTMENT

9-8-76

ARRAIGNMENT

9-16-76

TRIAL

1-17-77

2-2-77

2-2-77

MAGISTRATE

DATE

INITIALS

APPEARANCE DATE

PRELIMINARY EXAMINATION

OR

REMOVAL

OR

HELD

OUTCOME

DISMISSED

HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT

HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT

U.S. Attorney at Rest

John W. Timbers

791-1936

258

ATTORNEYS

J. R. Herold % Giangrande & Herold

Suite 300, 175 Main St., White Plains, NY 10601

(914) 761 7800

DATE

(DOCUMENT NO.)

PROCEEDINGS

EXCLUDABLE DE

9-8-76

Filed indictment.

9-16-76

Def't. (Atty. present) pleads not guilty. Ordered F/P. Bail \$10,000. P.R.B. unsecured. Case assigned to Judge Haight for all purposes.

9-16-76

Filed Notice of Appearance by J. Radley Herold, % Giangrande & Herold, Suite 300, 175 Main St., White Plains, NY 10601 (914) 761 7800.

9-16-76

Filed P.R.B. in the Amt. of \$10,000. Unsecured.

10-1-76

Def't. Not present at this P.T.C. represented by Atty. J. Rodlay Herold Gov't by Thomas M. Fortuin Legal Aid. Trial Date Set for Shortly after New Year, Court shall announce date later.... Haight J....

10-1-76

Filed Order. Travel restrictions previously imposed upon dft. by PRB dtd. 9-16-76 is amended to permit dft. to travel within continental U.S. for business purposes or for family emergencies.... Haight J. (mn)

10-7-76

Filed Notice of Appearance by J. Radley Herold.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
			Interval (a)	Start Date End Date (b)	File Code (c)	Total Days (d)
12-30-76	Filed Govts. Notice of Motion for order granting reciprocal discovery Pur. to FRCrP. 16 (b).					
12-30-76	Filed Govt. Affdvt. in support of motion for reciprocal discovery.					
12-30-76	Filed Govts. Memorandum of Law.					
1-12-77	Filed Memorandum Order. Dfts. motion for bill of particulars, granted, Govt. to respond not later than 1/14/77. Motion for severance as indicated denied in its entirety. Motion for discovery of grand jury testimony of former employees of Lane Check Cashing, Inc denied. Govts. motion for reciprocal discovery granted, Etc.... Haight J. (mn)					
1-13-77x	Filed Govts. Bill of Particulars.					
1-17-77	Dft. Harold Lane P/W Atty. J. Rodlay Herold, Govt. by JoAnn Harris, AUSA, Jury Trial 12 Jurors & 2 Alternates selected, all sworn. Trial begun & continues.					
1-18-77	Trial Continues.					
1-19-77	" "					
1-20-77	" "					
1-21-77	" "					
1-24-77	" "					
1-25-77	" "					
1-26-77	" "					
1-27-77	" "					
1-28-77	" "					
1-31-77	" "					
2-1-77	" " Summations & Judges Charge to Jury.					
2-2-77	Jurors Continue Deliberations. Trial Continues. @ 10:45 AM. Jurors Reach Verdict on Counts One Thru 26 Guilty on each count as charged. Jurors Polled: Sentence Date: March 25, 1977 at 2 PM. P.S.E. Ordered. Present bail conditions are to remain. Dft. has until Monday, Feb. 7, 1977 (end of business day) to meet the increased bail conditions of \$25,000.00 Secured by a Surety Company Bond. failure to comply with the order of the Court, the dft. would then be remanded. Haight J.					
2-7-77	Filed PRB in the Amount of \$25,000.00 pending the disposition of appeal, by the Midland Ins. Co.					
2-14-77	Dft. Harold Lane p/w Atty. J.H. Herold, Govt. By JoAnn Harris AUSA. Dft. makes application to lift the limitations on travel pending sentence. See Court Order date 2/14/77..... Haight J.					
2-15-77	Filed Order. Bail conditions in this case are amended as follows: If Dft. wishes to travel beyond the prior bail conditions he must advise the U.S. Atty. Office as indicated. In no event is the dft. to travel beyond the continental limits of the United States.... Haight J. (mn)					

(cont'd)

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

76 Cr. 879

Harold Lane

App. 3

76

879

Yr.

Docket No.

10

V. EXCLUDABLE DEL

(a) (b) (c) (d)

DATE

PROCEEDINGS (continued)

Page #3

(Document No.)

3/3/77

Filed Govts. Affidvt in opposition to dfts. motion for a judgment of acquittal notwithstanding the verdict of guilty.

3/3/77

Filed Govts. Memorandum of Law.

3/22/77

Filed Opinion #45712. Dft. moves for judgment of acquittal notwithstanding guilty verdict & order setting aside guilty plea & for new trial. Dfts. motion in all respects denied...
.....Haight J. (mailed notice)

3-25-77

Filed Judgment & Commitment (Atty. J. Radlay Herold Present) #77,439 The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FOUR (4) YEARS on Count One: On Counts 2,3,4, 5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23, FOUR (4) YEARS on each count to run concurrently with the sentence on Count One: On Counts 24,25 & 26 FOUR (4) YEARS on each Count to run concurrently with the sentence on Count One. AND On Count ONE, the dft. is FINED a total sum of \$10,800.00, The dft. is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law. Dft. cont'd on bail, bail increased to \$35,000.00 to be posted by end of business day March 30, 1977, Failure to do so, he must surrender at TEN AM, March 31, 1977. Pending appeal. Travel restrictions are to continue as per prior order of the court.....Haight J. Issued Commitment 3-28-77

4-1-77

Filed PRB in the Amount of \$35,000. pending the disposition of said appeal. by Midland Insurance Co.

4-1-77

Filed Dfts. Notice of Appeal from Motions dtd. 1/12/77 & 3/22/77 & 3/25/77. judgment of acquittal or for a new trial. (mailed notice)

4-3-77

Filed transcript of proceedings dtd. 1-24-77

4-8-77

Filed transcript of proceedings dtd. 3-27-77

4-11-77

Filed transcript of proceedings dtd. 1-17-18-1977

4-21-77

Filed Notice of Certification of record to the USCA.

6-21-77

Filed transcript record of proceedings dtd: Jan. 17, 18, 19, 1977, Jan 20, 21, 24, 1977,

6-21-77

Filed transcript record of proceedings dtd: Jan 25, 26, 27, 28, 31, 1977.

6-21-77

Filed transcript record of proceedings dtd: Feb 1, 2, & March 25, 1977

6-21-77

Filed Notice of 1st Supplement Record Certification to the USCA.

App. 4

JTB:J
H-2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

HAROLD LANE,

Defendant.

INDICTMENT

76 Cr.

CHARGE

The Grand Jury charges:

From in or about the month of March, 1973 up to and including the month of November, 1975, in the Southern District of New York, HAROLD LANE, the defendant, unlawfully, wilfully and knowingly did embezzle, steal, purloin, and knowingly convert to his own use, money of the United States and a department and agency thereof, to wit the Department of Agriculture, totalling approximately \$1,007,102, which had been collected from the sale of food stamp coupons by Lane Check Cashing, Inc., a corporation owned and operated by the defendant.

(Title 18, United States Code, Section 641.)

COURTS TWO THROUGH TWENTY-THREE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, HAROLD LANE, the defendant, in matters within the jurisdiction of a department and agency of the United States, to wit, the Department of Agriculture, unlawfully, wilfully and knowingly, did make false, fictitious and fraudulent statements and representations, to wit, that on the dates set forth below Lane Check Cashing, Inc. deposited in the New York City Federal Reserve Bank, to the account of the Department of Agriculture, Food and Nutrition Service the amounts of money set forth below which had been collected by Lane Check Cashing, Inc. for the sale of food stamp coupons:

<u>COUNT</u>	<u>DATE OF STATEMENT</u>	<u>AMOUNT OF MONEY FALSELY REPORTED DEPOSITED</u>
2	February 15, 1974	3,890.00
3	February 28, 1974	3,786.75
4	March 31, 1974	4,594.75
5	April 30, 1974	22,872.25
6	June 1, 1974	23,943.50
7	June 19, 1974	37,203.00
8	August 3, 1974	34,642.00
9	August 31, 1974	19,175.25
10	September 30, 1974	41,296.25
11	October 31, 1974	44,796.75
12	November 30, 1974	50,281.25
13	December 31, 1974	61,125.25
14	January 31, 1975	64,180.25
15	February 28, 1975	82,662.50
16	March 31, 1975	58,662.50
17	April 30, 1975	59,690.50
18	May 31, 1975	70,847.75
19	June 30, 1975	64,636.00
20	July 31, 1975	64,338.75
21	September 15, 1975	88,906.25
22	October 15, 1975	75,113.75
23	October 31, 1975	76,064.00

(Title 18, United States Code, Section 1001)

JT:bmj
1-2604

App. 6

COUNTS TWENTY-FOUR THROUGH TWENTY-SIX

The Grand Jury further charges:

In or about the years hereinafter set forth, in the Southern District of New York, HAROLD LANE, the defendant, who at the time resided and conducted his business within the Southern District of New York, did unlawfully, wilfully and knowingly attempt to evade and defeat the income tax due and owing by himself to the United States of America although the defendant then and there knew that he had taxable income in the amounts set forth below, upon which federal income tax was due in the amounts set forth below:

<u>COUNT</u>	<u>CALENDAR YEAR</u>	<u>APPROXIMATE TAXABLE INCOME</u>	<u>INCOME TAX DUE</u>
24	1972	\$ 25,286.00	\$ 6,123.00
25	1973	78,065.00	42,907.00
26	1974	338,146.00	207,582.00

(Title 26, United States Code, Section 7201.)

Robert L. Fiske, Jr.
FOR THE

ROBERT L. FISKE, JR.
United States Attorney

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

HAROLD LANE,

Defendant.

INDICTMENT

Title 17, United States Code,
Section 641; Title 18, United
States Code, Section 1001;
Title 26, United States Code,
Section 7201.

ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

[Signature]
Foreman.

App. 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

HAROLD LANE, :

Defendant. :

BILL OF PARTICULARS

76

RECEIVED

JAN 14 1977

As a Bill of Particulars in the above captioned criminal case, the Government states the following:

1. With respect to Count 1, the Government alleges that the monies were stolen or embezzled on or around the months set forth in Counts 2 through 23, in the approximate amounts set forth in those counts, plus the approximate amount of \$27,376.50 in November of 1975.

2. With respect to Counts 24 through 26:

(a) The Government will rely upon the "net worth" method of proof in regard to Counts 24 and 25; and upon the "specific items" method of proof in regard to Count 26.

(b) The Government alleges that the defendant filed no individual income tax return for the years 1972, 1973 and 1974. In addition to the defendant's wilful failure to file an income tax return for 1972, 1973 and 1974, the Government alleges that the manner of the defendant's attempt to evade taxes was conduct likely to conceal and mislead, to wit, among other things, the handling of transactions to avoid usual records.

The Government will rely on certain of the defendant's filed individual and corporate tax returns as part of its proof in the case.

(c) The Government will rely on no false entries on the defendant's 1972, 1973 or 1974 individual tax returns, because the defendant failed to file an individual tax return for each of those years.

(d) The Government will rely on no omissions on the defendant's 1972, 1973 or 1974 individual tax returns, because the defendant failed to file an individual tax return for each of those years.

(e) See (c), (d), supra.

(f) See (c), (d), (e), supra.

(g) With respect to Counts 24 and 25, the Government's starting point will be defendant's assets and liabilities as of December 31, 1971. For Count 24, the Government's proof will serve as a basis for the calculation of increase in net worth between December 31, 1971 and December 31, 1972. For Count 25, the Government's proof

will serve as a basis for the calculation of
increase in net worth between December 31, 1972
and December 31, 1973.

Dated: New York, New York
January 13, 1977

Yours, etc.

ROBERT B. WISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America.

By:

JO ANN HARRIS
Assistant United States Attorney
Office and P.O. Address
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1919

TO: J. RADLEY HEROLD, ESQ.
Giangrarde & Herold
Northcourt Building
175 Main Street
White Plains, New York 10601

App. 19

ou will please take notice that a _____
which the within is a copy, was this day
y entered in the within entitled action,
the office of the Clerk of this Court.

Dated, N. Y., _____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

Please take notice that the within _____
ll be presented for settlement and sig-
ture of the Honorable _____
ited States District Judge, at the office of
e Clerk, Room 601, United States Couri-
use, Foley Square, Borough of Manhat-
n, City of New York, on the _____ day of
_____, 19 _____, at 10:30 o'clock in the
_____ noon or as soon thereafter as coun-
l can be heard.

Dated, N. Y., _____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

HAROLD LANE,

Defendant.

BILL OF PARTICULARS

76 Cr. 879 (CSH)

ROBERT B. FISKE, JR.
TEL. 224-3311 United States Attorney
XXXXXX Attorney for USA
791-1919

Due service of a copy of the within is here
by admitted.

New York, _____, 19 _____

Attorney for

To

Attorney for

App. 12

United States of America vs.

United States District Court for

HAROLD LANE

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

DOCKET NO. 76 Crim 0879

COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
March 25 1977

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

J. Radlay Herold

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did embezzle, steal and purloin, COUNT ONE.

(Title 18, United States Code, Section 641)

COUNTS TWO THROUGH TWENTY-THREE:

(Title 18, United States Code, Section 1001)

COUNTS TWENTY-FOUR THROUGH TWENTY-SIX:

(Title 26, United States Code, Section 7201)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FOUR (4)

YEARS on Count ONE: On Counts 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23, FOUR (4) YEARS on each count to run concurrently with the sentence on Count ONE: On Counts 24,25, and 26, FOUR (4) YEARS on each Count to run concurrently with the sentence on Count ONE.

AND

On Count ONE, the defendant is FINED a total sum of \$10,000.00. The defendant is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law.

SPECIAL CONDITIONS OF PROBATION

Defendant continued on bail, bail increased to \$35,000.00 to be posted by end of business day March 30, 1977. Failure to do so, he must surrender at TEN AM, March, 31, 1977. Pending appeal. Travel restrictions are to continue as per prior order of the Court.

ADDITIONAL CONDITIONS OF PROBATION

DOCKETED AS
A JUDGMENT # 77,439
ON March 30, 1977

In accordance with the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other authorized officer.

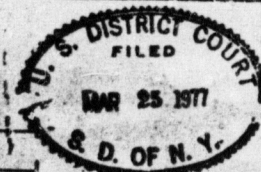
SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CHARLES S. HAIGHT, JR.

March 25, 1977



1 RMjc

App. 13 [2]

2 (In the robing room)

3 THE COURT: Let the record show this is a
4 conversation in the robing room before a Jury is selected in
5 United States against, versus Harold Lane.

6 What I need to know from Counsel is the extent
7 to which there is overlapping proof on the three tax counts
8 in the indictment, counts 24, 25 and 26, which refer to
9 calendar years 1972, 1973 and 1974.

10 I need to know to what extent the proof on the
11 tax counts will overlap with the food stamp counts. The
12 earliest date of statement in those counts is February 15,
13 1974 and extending up through October 31, 1975.

14 I am exploring whether or not severance is
15 appropriate with respect to the tax counts. Can you enlight-
16 en me a bit more on that?

17 MRS. HARRIS: Yes, Your Honor.

18 Let me begin by pointing out that with respect
19 to the tax counts, and that would include each of the years
20 1972, '73 and '74, the government will allege here that the
21 defendant filed to file any tax returns at all for those
22 years.

23 The man is charged with tax evasion and our
24 proof, in order to be sustained here, must show not only
25 the failure to file, but we must determine some affirmative

evidence of an intent to evade the taxes.

Our evidence here with respect to the intent to evade taxes will be mainly concerned with the way that the defendant kept his books and records and ran his business on a day to day basis in a manner which we will assert was calculated to conceal the true extent of his income. That particular proof would apply to each of the tax counts and it is our obligation, I believe, to produce the -- some evidence of intent to evade taxes.

That same proof, that is, the proof of how the defendant ran his day to day business, is intricately involved with the evidence on the food stamp counts. In other words, the evidence the government expects to produce here about the way he ran his business includes evidence as to how he dealt with his food stamp transactions as well as everything else that was flowing in and out of the business.

It is important here perhaps to state factually that the defendant was a check casher. The business requires a cash flow in and out of the business and it will be our position here that among the cash that was flowing in and out of the business every day the defendant added the food stamp money that he took in and that he, by the way he kept his books and records, concealed that fact. It is the Government's position that it really is evidence of the way the

1 RMjc

App. 15[4]

2 defendant ran his business which is very pertinent to
3 both the food stamp case and the tax evasion case here.

4 In addition, Your Honor, as I stated in the pre-
5 trial motions on this matter, with respect to Count 26,
6 which is the last tax evasion count, we do expect to prove
7 that by the specific item method and the specific item will
8 be the amount of money that we content the defendant took
9 in food stamp money during 1974.

10 THE COURT: What do you say, Mr. Herold,
11 anything?

12 MR. HEROLD: In addition to what I said in
13 my original papers -- I would like to stand with that,
14 but in the argument of the Assistant U.S. Attorney is a
15 failure to connect at least, if not all, the 1972 tax
16 counts, which I believe is the 24th count of the indictment,
17 dealing with calendar year '72, to connect that in any way,
18 shape or form to the remaining allegations in the indict-
19 ment. It deals with calendar year 1972, yet the first
20 count of the indictment begins in March of 1973 and ends in
21 November of 1975, and all of the false filing allegations,
22 from count 2 through 23 of the indictment, begin, as Your
23 Honor has pointed out, I believe, in February of '74 and
24 ending in October of 1975, and no where in that most
25 definitely do I see any relationship to the food stamp alle-

1 RMjc

App. 16 [5]

2 gations. I can't connect the two.

3 THE COURT: I gather what the Government
4 says is that familiarity with the defendant's bookkeeping
5 procedures and business practices, which would be essential
6 to an understanding of the tax counts, would also be use-
7 ful or pertinent in respect of understanding the food stamp
8 counts. Is that what it comes down to?

9 MRS. HARRIS: That is correct, Your Honor.

10 MR. HEROLD: If it please the Court,
11 assuming that might be true, that doesn't necessarily
12 justify the inclusion most certainly for the 1972 calendar
13 year of a criminal charge. If it is evidentiary and per-
14 missible, then it is evidentiary and permissible, but doesn't
15 permit counts not related to this indictment to be placed
16 in the indictment and tried at the same time.

17 THE COURT: It troubles me some and of
18 course the concern that motivates us all, I think, is where
19 in respect of the 1972 tax year the Jury conclude that the
20 defendant had attempted to evade income tax and then
21 reasoned, no matter what my own instructions might be, that
22 having done that wicked thing the chances are he did some-
23 thing wicked in respect to the food stamps, or vice versa,
24 and I think that is what is the subject of legitimate con-
25 cern here.

1 RMjc

App. 17[6]

2 MRS. HARRIS: If I may say two things.

3 One, there will be some evidence as to the defendant's
4 business practices in 1972. I will adduce that with respect
5 to the food stamp counts in the sense of giving the Jury a
6 background in terms of how he came to sell food stamps, I
7 will give the Jury an understanding of how his business was
8 set up in 1972 and I think that evidence would be perfectly
9 permissible as a background to the food stamp counts.

10 As far as the 1972 tax count is concerned, I
11 think everyone would agree that it is connected to the
12 other tax counts in the sense that evidence of failure to
13 file in prior years is probative of an attempt to evade
14 income taxes in future years.

15 THE COURT: As far as 1974 is concerned, Mr.
16 Herold, can you really sustain a motion to sever there?
17 There we seem to see a considerably greater intertwining of
18 the evidence and the facts. Do you press a motion to sever
19 with respect to Count 26, which is calendar year 1974?

20 MR. HEROLD: Certainly not as strongly as I
21 do the 1972 count, no, sir. With the developing bill of
22 particulars and the explanation of the United States Attorney
23 which although it was available to me originally, it was
24 certainly not available to me in the detail in which it
25 has been presented now.

1 RMjc

App. 18 [7]

2 THE COURT: If the 1974 tax count is not
3 as vulnerable to a motion to sever from the food stamp
4 business and it seems to me, in fairness, that it is not,
5 then there is perhaps some force to what the Government
6 says in submitting proof and also the determination of
7 this Jury and the two earlier years, 1972 and '73, and your
8 position on that. I take it, Miss Harris, is that even in
9 respect of 1974 proof of evasion of 1972 and '73 is
10 admissible, what, to show a continuing trend?

11 MRS. HARRIS: To show a continuing trend and
12 as evidence of a specific intent to evade taxes.

13 THE COURT: I see.

14 I'm going to let the indictment stand as it is.
15 I will not direct a severance in this case.

16 Off the record.

17 (Discussion off the record)

18 MRS. HARRIS: One more matter, Your Honor.
19 I would move, as I am sure Mr. Herold would move, to ex-
20 clude all potential witnesses from the Courtroom during the
21 trial of this matter, but I do have one request I would
22 like to discuss at this time. There are a number of
23 agents who have been working with me on this case, and it
24 involves considerable paper, and I would ask that an agent
25 be permitted to sit with me at Counsel table during the food

1 197 rmmch

2 closely, and it is apparent to me that you are.

3 I noticed when Miss Grady keep dropping her
4 voice from time to time there were occasions when all
5 fourteen of you would lean forward in unison, and it
6 reminded me of a boat being rowed by fourteen people,
7 and that is circumstantial evidence that you are following
8 the case.

9 I commend you for it, and I urge you to
10 continue. You are doing just what I hoped you would be
11 doing.

12 I will see you tomorrow morning at 10:00
13 o'clock. Please don't discuss the case with anyone.

14 (The jury leaves the courtroom.)

15 THE COURT: Let's consider some of the
16 evidentiary problems that have been called to the Court's
17 attention and that are referred to in the Government's
18 memorandum that was handed up yesterday.

19 I want to begin with the offer of proof in
20 respect of a March 21, 1974 robbery at the White Plains
21 store.

22 For the sake of the record, I will simply
23 read the description which appears on page 5 of the
24 Government's brief because I take that to be an offer of
25 proof in respect of that incident.

1 198 rmmch

2 "On March 21, 1974, Lane's White Plains
3 store was robbed at gunpoint. When the police arrived,
4 Lane's books showed that there had been about \$20,000 in
5 cash on hand and missing. A Lane employee informed the
6 police that the \$20,000 was a dummy figure which Lane kept
7 on the books and that, in fact, only about a quarter of
8 that amount had been taken.

9 "With the officer listening in, the employee
10 called Lane, who told her to keep quiet about the dummy
11 figure.

12 "Lane later signed a statement attesting that
13 about \$23,000 had been taken. Later, confronted with the
14 employee's statement, admitted the figure on the books was
15 phony and filed a sworn statement to the insurance company
16 claiming about \$5,000."

17 I take it, Mrs. Harris, that the intended
18 witnesses on that evidence are the Lane employee and the
19 police officer; is that so?

20 MRS. HARRIS: That's correct, your Honor.
21 There would be three documents attached to that offer of
22 proof as well.

23 One would be the daily transaction sheet, which
24 is the book that I refer to in my offer of proof.

25 The second would be Mr. Lane's signed statement

199 rmmch

stating that some \$23,000 had been stolen --

THE COURT: Was that statement sworn?

MRS. HARRIS: Yes, your Honor -- before I assure you of that, let me check to make sure, but I am fairly certain it was.

(Pause)

MRS. HARRIS: Yes, it is, your Honor.

And the notarized claim to the insurance company which Mr. Lane submitted for about, I believe, \$5,300.

That would be the third document, your Honor.

THE COURT: Let's consider, first, the tax indictments.

In what manner is this proffered evidence relevant to the tax aspects of the case?

MRS. HARRIS: In the tax evasion counts here the Government submits that the conduct of the defendant's business is very, very relevant. In fact, with respect to the tax evasion, the Government is obligated to prove some affirmative act evidencing an intent to evade taxes.

The Government here is relying upon the way that the defendant kept his books and records and on the acts of the defendant which we will claim show an effort to conceal the real nature of his business, and under the

1 200 rmmch

2 Spies case, your Honor, I believe there is simply no
3 question but what the conduct of a defendant's business is
4 relevant to a tax evasion case.

5 The dummy figure is a very, very relevant
6 portion of the evidence that we are adducing about the
7 conduct of the defendant's business. In other words,
8 it will be our position he was avoiding making the usual
9 records of cash transactions.

10 With respect to the incident on March 21 of
11 1974, that incident contains Mr. Lane's admission that
12 the purpose of the dummy figure is indeed to mislead and
13 conceal the cash business that is going through that store.

14 Furthermore, the incident corroborates what
15 all the Government witnesses have been saying here about
16 that dummy figure.

17 Thus, to the extent that it would be applic-
18 able to the tax case, I think it is just clearly and directly
19 relevant.

20 THE COURT: Let me see if Mr. Herold agrees.

21 Do you agree the March 21, 1974 incident is
22 relevant to the tax aspect of the case?

23 MR. HEROLD: No, your Honor.

24 I would like to address my remarks to the
25 entire case, unless you wish me to hold it, and answer

1 201 mmch

2 them all at once.

3 THE COURT: I was thinking of dividing the
4 dialogue into tax, on the one hand, and embezzlement
5 and false statement on the other, but I won't insist
6 on that, and you can sit down and perhaps Mrs. Harris
7 will tell me how it is pertinent on the embezzlement and
8 the false statement aspects.

9 MRS. HARRIS: I think the argument I have
10 just made with respect to the tax evasion case is very
11 much applicable to the embezzlement case.

12 As far as the embezzlement case is concerned,
13 it is the Government's position that the conduct of the
14 defendant's business is very relevant. The reason that
15 it is relevant here is that I think we have adduced
16 enough evidence to demonstrate the food stamp money was
17 commingled with all the rest of the defendant's cash and
18 therefore flows into just the cash transactions in the
19 business, and to the extent that the dummy figure evidences
20 an effort to conceal the nature of those cash transaction,
21 if nothing else, it demonstrates the defendant's opportunity
22 to embezzle the money that was coming into his business.

23 I am not making this argument under the
24 rule of evidence 440(b); I am not at all.

25 The argument is that the dummy figure and the

1 202 rmmch

2 conduct of the defendant's business directly corroborates
3 the Government's theory here, which is that the food stamp
4 money was being mixed in with all the rest of the money,
5 converted and used in the business, and then flowed out
6 of the business.

7 THE COURT: But do you need that corroboration?
8 The precise thrust of this evidence is that, after a
9 robbery of the store, Mr. Lane apparently was prepared
10 to, in the first instance, state falsely to an insurance
11 company that \$23,000 had been taken when that was not
12 true, and he recanted when the employee came forward and
13 said what she said.

14 Now, that may not have been a proper or a
15 laudable thing to do, but what I must weigh is its proper
16 probative value on the issues before us, which do not
17 encompass fraud of an insurance company, as against the
18 prejudice to the defendant.

19 Isn't there a great deal of evidence already
20 that the cash was commingled, that it was all there in the
21 drawer, that Mr. Lane would take it out, that when he
22 did take some money out, that would trigger the dummy
23 figure machinery, and that when it was put back, that would
24 cause the dummy figure to go down again?

25 We have a great deal of evidence on the genesis

1 203 rmmch

2 and functioning of the dummy figure, it seems to me.

3 How is this particular instance going to be
4 anything other than cumulative?

5 MRS. HARRIS: I am having difficulty seeing
6 the thrust of the defense yet, and I don't want to argue
7 with respect to the embezzlement case, but I will, but I
8 don't want to right now, that this incident will demon-
9 strate some lack of inadvertence or mistake or some
10 innocent reason with respect to the dummy figure.

11 I could offer it -- I will make the argument
12 now:

13 It could come in under Rule 404(b).

14 THE COURT: As a prior act?

15 MRS. HARRIS: As a prior act, I suppose, but
16 that is not really the argument I am making. What I am
17 really saying is that, if the dummy figure is important
18 on the embezzlement case, and I believe it is, then the
19 March 21 incident is as probative on the question of the
20 dummy figure as it is for the tax evasion case.

21 It is an admission by Mr. Lane that that is
22 an intentional thing, this dummy figure, and that it is
23 meant to conceal the true nature of his transactions.

24 THE COURT: It is an admission that constitutes
25 an admission to conceal --

1 204 rmmch

2 MRS. HARRIS: As opposed to inadvertence
3 or innocent reason.

4 THE COURT: How is it that?

5 The White Plains store was robbed and the
6 books showed that \$23,000 was gone, and that wasn't true
7 because the major portion of what the books showed was
8 comprised of the dummy figure, and the robbery having
9 occurred, Mr. Lane, it would appear, took a shot at
10 claiming the book figure from the insurance company and
11 got tripped up, it would seem, when the employee came
12 forward and said what she said and the officer overheard
13 it.

14 How does that prove anything other than an
15 isolated attempt to turn one of these dummy figures into
16 a claim upon an insurance company?

17 MRS. HARRIS: But, your Honor, what it does
18 do is demonstrate, one, that Mr. Lane was very aware
19 of the dummy figure, and, two, that the purpose of the dummy
20 figure was to conceal the true transactions that were
21 going through his business.

22 THE COURT: Concel the true transactions?
23 Yes. You mean that when he goes to the insurance company
24 and says, "See here, I have lost \$23,000," in point of
25 fact if that amount wasn't there in the store -- it is

205mmch

certainly clear from the offer of proof he was attempting to conceal the truth from the insurance company --

MRS. HARRIS: Perhaps I can clear up a factual matter.

The claim he made was for a true claim of \$5,300, but it is his statement to the police when he first came in and heard of the robbery where he uses the inflated figure. Then he is confronted with the employee's statement and he says, "That's right, that \$20,000 is an incorrect figure," and then he turns around and claims the proper amount from the insurance company.

THE COURT: I see. The original statement was to the police?

MRS. HARRIS: That's correct.

THE COURT: And his original statement was based upon the transaction sheets which included the dummy figure?

MRS. HARRIS: That's correct.

THE COURT: And it wasn't until the whistle was blown that he admitted that the figure was phony?

MRS. HARRIS: That's correct.

He made no false claim against the insurance company.

THE COURT: You say this is a course of conduct

1 206 mmch

App. 28 [584]

2 which, in one instance at least, constituted an effort
3 at concealing the true facts, in this particular instance,
4 from the police?

5 MRS. HARRIS: What it does, in addition to
6 that, is that we have Mr. Lane's own admission that there
7 is a dummy figure in his books, and prior to his admission
8 that there is a dummy figure in his books, we have an effort
9 to conceal the true nature of the cash transactions going
10 through his business.

11 Both of those things, I would submit, are
12 very relevant in the embezzlement case, as well as in the
13 tax case.

14 THE COURT: And, of course, if it relevant
15 in the embezzlement case, then it follows, as the night
16 the day, it seems to me, that it is relevant to the false
17 statement case.

18 MRS. HARRIS: In the false statement case, I
19 believe so. I think you should consider it separately,
20 but the false statements, of course, are an effort, in
21 our view, to conceal the true nature of his transactions as
22 well.

23 They are part and parcel of the whole course
24 of conduct.

25 THE COURT: Is it possible in this case if the

207 rmmch

Government fails to prove embezzlement it could prove a false statement?

MRS. HARRIS: Yes, that would be possible, your Honor.

THE COURT: I will hear from you, Mr. Herold, on the March 21 incident.

MR. HEROLD: With regard to the March 21, 1974 incident, the factual posture is the claim of the Government that a statement was made by Mr. Lane to the police -- purportedly the claim is falsely indicating the amount of money on hand at the time of the robbery.

As Mrs. Harris did say, the later claim to the insurance company is, as far as all of us know, an accurate claim of a far less amount than the original amount made to the police.

Firstly, your Honor, the position we are in now is quite different than if we were arguing whether or not this material could be brought up on cross-examination of Harold Lane were he to take the witness stand. The situation is one of whether or not this type of material can be used in the case in chief of the Government.

Very frankly, I cannot tell you that Harold Lane will not testify in his own behalf, nor can I tell you that he will; we don't know. Neither of us know for

1 208 mmch

2 certain. That is an objective that has not yet been
3 reached, a decision which has not yet been made, but it
4 is a fact that we just don't know, one way or another, at
5 this juncture.

6 I do not see this as being, and I am sure
7 the Government is not offering this on an idea of whether
8 Mr. Lane is a truthful person, because he is not on the
9 witness stand to have that tested.

10 The charges here in the embezzlement deal
11 with March 1973 up to November of 1975, an allegation of
12 a theft from the Department of Agriculture of more than
13 a million dollars in monies from food stamp sales.

14 The remaining false filing statements allege
15 that they are connected, that is, at least during 1974
16 and '75, that he falsely made a statement to the effect
17 that he had made a deposit when it is the contention of the
18 Government that he didn't, and the three income tax evasion
19 charges, the last one in particular, is based upon, as
20 I understand the Government's position, the alleged food
21 stamp monies received and what would have been the tax due
22 and owing had they been received by Mr. Lane legally or
23 illegally.

24 The other two tax counts are based, at least
25 in part, if not totally, on what the Government feels was

1
2 income that his businesses derived which he should have
3 either declared or paid tax on.

4 As your Honor has set forth here in the course
5 of this argument quite accurately, we have had a couple of
6 days of testimony here which constantly refer to the
7 dummy figure. There have been a fair number of witnesses
8 today and there was one all day yesterday making
9 reference to that dummy figure, and I cannot quite agree
10 with counsel for the Government that there is some sort
11 of a contest as to whether or not there was any dummy
12 figure. There may be a contest as to the results of it,
13 but I don't think there is a contest as to its existence,
14 as a matter of fact.

15 In addition, your Honor, there is some mention
16 by Government counsel of commingling of funds. As far
17 as I am aware, and I may be unaware of it, that is not
18 illegal. It may not be a wise business practice, but
19 it is not illegal.

20 In connection with the offered signed state-
21 ment by Harold Lane to the police, disregarding its
22 content, disregarding whether or not the statements were
23 made at all, and going purely to a question of admissibility,
24 there is no indication, and I believe the Government can
25 never say that a criminal charge was brought against Mr.

1 210 rmmch

2 Lane in the state court as the result of that sworn
3 statement, if it was so sworn -- sworn statement by Mr.
4 Lane. It contains a notary public signature at the
5 bottom left-hand corner, but there is no indication that
6 anybody -- was ever arrested or charged --

7 THE COURT: It doesn't have to be under
8 440(b). It is unquestionably a prior act of Mr. Lane.

9 MR. HEROLD: I agree with that, your Honor.

10 Although the Government wishes to have this
11 into evidence, they use some phraseology here which con-
12 cerns me deeply, and that is in relation to its getting
13 into evidence on the embezzlement charge they say it shows
14 an opportunity to embezzle. To me that means a propensity
15 to commit crime, and they say that it corroborates the
16 testimony of other witnesses. To me, that is another way
17 of some way of getting in self-serving statements to the
18 effect that the other witnesses are being truthful.

19 As a general proposition of law, I don't
20 think either of those are proper.

21 So we come down to Section 404, and I believe
22 that, although the Government doesn't wish to offer it on
23 that ground, or seems reluctant to discuss it, that that
24 is really what is being done here.

25 404 says in subparagraph (b), in reference to

1 211 rmmch

2 character evidence and evidence of other crimes, wrongs or
3 acts, "evidence of other crimes, wrongs or acts are
4 not admissible to prove the character of a person in order
5 to show that he acted in conformity therewith. It may,
6 however, be admissible for other purposes, such as proof
7 of motive, opportunity, intent, preparation, plan, knowledge
8 and intent, or absence of mistake or accident."

9 Your Honor, I feel that, although that is
10 the justification which the Government claims, we have
11 had, as your Honor pointed out, two days of testimony which
12 I feel is cumulative in nature about this so-called dummy
13 figure, and that it would be a waste of the Court's time --
14 it would be cumulative evidence, it would be time-wasting
15 and it would be confusing for the jury.

16 I also feel, your Honor, that, in view of the
17 entire set of circumstances here, the reason why the
18 Government wants it in, either from what they say is the
19 reason or what I feel is the reason, is that it would be
20 highly prejudicial to Harold Lane, and that its prejudice
21 would outweigh any probative value, and that it should
22 not be admitted under Rule 404 and should be excluded
23 under Rule 403, which provides that although evidence may
24 be relevant, and I don't assume that it is in this case,
25 but if it is, that such evidence may be excluded if its

1 212 mmch

App.34 [590]

2 probative value is substantially outweighed by the danger
3 of unfair prejudice, confusion of the issues, or misleading
4 the jury, or by considerations of undue delay, waste of
5 time, or needless presentation of cumulative evidence.

6 Consequently, your Honor, under those
7 circumstances, I respectfully object to any offer of this
8 type of testimony or evidence going into the record of
9 this trial, and most strenuously oppose it as being so
10 prejudicial that any probative value, if there is any at
11 all, would be outweighed to the detriment of my client.

12 THE COURT: Considering the tax aspects of
13 the indictment, Mr. Herold, is it not the fact that proof
14 of conduct of business and operation of business and
15 keeping of books, and so forth, is highly relevant to
16 that aspect of the case?

17 MR. HEROLD: I most frankly, although I can
18 understand the arguments of the Government, cannot agree,
19 your Honor.

20 I feel it is being admitted not really for
21 those reasons but because it shows a propensity or
22 opportunity to do illegal acts, assuming they are illegal,
23 because there is no indication here that a dummy figure,
24 per se, is illegal, and in fact it is coming to the
25 point here where there is no doubt about a dummy figure;

1 213 rmmch

2 the question is what is it for.

3 Therefore, your Honor, I feel, no matter
4 what aspect of the case is concerned, and one of the tax
5 counts deals with food stamps -- no matter what aspect
6 of the case is being considered, I feel it is too
7 prejudicial, even if it were relevant, and I think all
8 of the reasons why it could be relevant under 404, about
9 motive, intent, lack of accident, are not what this case
10 is all about.

11 THE COURT: And yet it does seem to me clear
12 that, not so much the existence of the dummy figure,
13 which has been testified to by a number of witnesses, but
14 its character, so to speak, its nature, is an important
15 factor and probably with respect to all aspects of the
16 case.

17 In United States v. Byrd, at 352 Fed.2d and
18 at page 574, the Second Circuit addressed this balancing
19 procedure which, as you fairly say, is implicit in 404
20 and explicit in 403, and one of the legitimate purposes
21 of proof of a prior act is to negative the claim by the
22 defendant that the acts in suit were committed innocently
23 or through mistake or misunderstanding.

24 I can foresee an argument from you to the
25 jury on Mr. Lane's behalf, whether Mr. Lane takes the

1 214 rmmch

2 stand or not, that because of certain things that have
3 been said by Government witnesses on cross-examination,
4 and sometimes even on direct, that the dummy figure was
5 a wholly innocent business convenience which existed
6 solely to take care of cash emergencies that might
7 develop among the several branches, and whenever Mr. Lane
8 made a withdrawal he either told people or left a note
9 and that when the money was returned, which your cross-
10 examination would tend to show happened promptly enough,
11 the dummy figures fluctuated down, and it was just a
12 wholly innocent practical, pragmatic way of dealing with
13 the day-to-day and perhaps unpredictable cash demands
14 affecting a series of check-cashing stores in a busy
15 suburban area.

16 A rather appealing picture could be painted
17 of the dummy figure on the basis of the evidence we have,
18 but is not this evidence inconsistent with that innocent
19 portrayal of the dummy figure? Doesn't this evidence tend
20 to negative that particular innocent charge? If it does,
21 then I think an argument of some substance can be made for
22 admission under 404(b).

23 What I am saying is that the nature and
24 operation of the dummy figure is important because the
25 dummy figure itself is central to the case. That is why

1 215 rmmch

2 we have been hearing so much about it.

3 Consequently, it seems to me that evidence
4 of the manner in which the defendant either used the dummy
5 figure machinery himself or sought to make it appear to
6 others, or the instructions he gave to his employees
7 and the offer of proof to keep quiet about it, could
8 legitimately be said to negative the argument of innocence
9 which it seems to me reasonable to anticipate from the
10 defendant.

11 MR. HEROLD: Your Honor, I would only add to
12 that --

13 THE COURT: Subtract from it, you mean?

14 MR. HEROLD: -- subtract from it, your
15 Honor, to the effect that I would anticipate that
16 Harriet Dollan in her testimony would indicate that the
17 so-called dummy figure -- that the monies were returned,
18 and I think that takes away from the entire thrust of the
19 argument of the Government.

20 In any event, I still feel that the prejudice
21 here far outweighs any probative value.

22 There are also the considerations of cum-
23 ulation of evidence, waste of time, and confusing the jury.

24 THE COURT: Well, I am going to permit the
25 evidence to come in and I am going to permit it to come in

1 216 rmmch

App. 38 [594]

2 on all aspects of the case.

3 I think that the nature of this particular
4 evidence and the central importance that attaches to the
5 dummy figure permits admission under Rule 404(b).

6 I want to turn, and I don't think this will
7 take as long -- I know it has been a long day -- there is
8 a reference on page 6 of the Government's brief to prior
9 false statements in respect of getting and keeping
10 licenses to do business as a check casher, and it is said
11 by the Government that these have to do with, among other
12 things, Mr. Lane's personal profile.

13 I don't understand that at all, Mrs. Harris.
14 If, by "personal profile," you mean the character of the
15 person, that is explicitly forbidden by 404(b).

16 MRS. HARRIS: I don't mean that, your Honor.
17 I mean that in his application ofr licenses the defendant
18 has not answered accurately certain things about himself
19 which the license calls for him to report.

20 THE COURT: For what probative purpose are
21 those prior statements being offered?

22 MRS. HARRIS: Here it would be entirely a
23 404(b), your Honor, and the argument would be that evidence
24 of prior false statements in the conduct of his business
25 would tend to negate any defense here of mistake, of no

66 1

dsjh

Dollan

2

excused. Thank you for being here this morning.

3

(Witness excused.)

4

THE COURT: We have some time before lunch.

5

We can start another witness at least.

6

MRS. HARRIS: The government calls Austin

7

Avery.

8

MR. HEROLD: May counsel approach the bench

9

before Detective Avery testifies?

10

THE COURT: Yes. I will see you in the robing

11

room.

12

(In the robing room.)

13

THE COURT: All right, what is the problem?

14

MR. HEROLD: The problem is this, your Honor:

15

in all frankness I was aware that Detective Avery would

16

testify and I was aware prior to the trial that he might

17

testify. I am personally acquainted with Detective Avery

18

and I know that normally when he is questioning somebody,

19

he usually testifies that he gives them the Miranda

20

rights. So I did not anticipate any problems along

21

that line of attack, because if he has a suspect he

22

normally testifies that he gives such rights.

23

Now, consequently, I made no such application

24

prior to trial to suppress that item of testimony, to

25

wit, the written statement signed by Harold Lane at the

1 dsjh

2 request of Detective Avery, which is going to be offered
3 through his testimony here.

4 However, when, during the course of the trial,
5 I was given various 3500 material and I was given
6 Detective Avery's about a day or two ago, definitely two
7 days ago, in his federal grand jury testimony on July 12,
8 1976, at page 4, he testifies as part of an answer to a
9 question, "When we arrived at headquarters, I took a
10 statement from him which he indicated 23,000 was taken
11 in the robbery. At that point I advised him of his
12 **rights** and informed him that a statement was made by
13 Miss Dollan to my partner and myself in which she
14 indicated she was carrying a dummy figure of \$20,000."

15 Now, it is the statement that he took
16 prior to the advice of rights, according to this grand
17 jury testimony, that is being offered in evidence, as
18 well as a statement after advice of rights.

19 Now, I am not asking here for an exclusion
20 of the one given after the advice of rights, but it
21 appears from this grand jury testimony that he already
22 knew from Miss Dollan and that there was a discrepancy
23 in the amount and, therefore, Mr. Lane was suspect. I
24 am not saying that he should have told him his rights over
25 the telephone because he was not indicating to Mr. Lane

68 1

dsjh

App. 41 [66b]

2

that he was actually in on the conversation at all. But

3

when he gets him at headquarters he gets a statement from

4

him to the effect that \$23,000 was taken in the robbery,

5

and then he advises him of his rights. It is that first

6

statement at headquarters which is encompassed in a

7

written document here that I seek to exclude on that

8

basis.

9

THE COURT: On the fact that it appears that

10

the Miranda warning was not given before he elicited from

11

Mr. Lane the written document?

12

MR. HEROLD: The written document before the

13

Court or at least the statement from him that \$23,000 was

14

taken in the robbery. The statement given at headquarters,

15

not the one over the telephone which he listened in to.

16

Obviously, that does not require an advice or Miranda

17

rights under any circumstances.

18

THE COURT: Two things are going to be offered

19

through Detective Avery, I suppose.

20

One is the oral statement which appears to have

21

been made by Lane to Avery before the Miranda rights were

22

given, is that correct?

23

MR. HEROLD: That is the way it seems to

24

read in the federal grand jury testimony.

25

THE COURT: That particular statement was what?

1 dsjh

2 MR. HEROLD: \$23,000 was taken in the robbery.

3 THE COURT: When was the written statement
4 indicated?

5 MR. HEROLD: I cannot really tell from the
6 context of this grand jury testimony.

7 THE COURT: I mean executed.

8 Mrs. Harris?

9 MRS. HARRIS: First of all, I would like to
10 talk with Detective Avery to get the facts clear in my
11 mind. It would appear to me there are probably three
12 statements here.

13 The first is the statement that Detective Avery
14 overheard on the telephone when Mr. Lane was talking with
15 Miss Dollan. There cannot be any problem with respect to
16 that problem.

17 MR. HEROLD: Nor am I seeking to exclude that.
18 That was settled yesterday.

19 MRS. HARRIS: What counsel is saying, it
20 appears from the grand jury testimony when Mr. Lane came
21 down to headquarters he volunteered again that there was
22 \$23,000 missing. I will have to get my facts straight
23 from the detective, but I believe what Mr. Herold is
24 saying that then Mr. Lane was given Miranda warnings and
25 then it must be that the written statement that Mr. Lane

89 1

dsjh

Avery-direct

App. 43 [682]

2

Lane signed before you confronted him with Miss Dollan's story?

3

4

A Yes, it is.

5

MRS. HARRIS: I offer Government's Exhibit 46-C.

6

7

MR. HEROLD: Your Honor, I believe the Court has already ruled it is admissible.

8

9

THE COURT: I have done so. The record is preserved from your point of view, Mr. Herold. The document is received.

10

11

(Government's Exhibit 46-C for identification received in evidence.)

xxx

12

13

MRS. HARRIS: May I read the statement to the jury, your Honor?

14

15

THE COURT: You may.

16

17

(Counsel reads Government's Exhibit 46-C in evidence to the jury.)

18

19

MRS. HARRIS: I have no further questions, your Honor.

20

21

22

23

24

25

THE COURT: Before cross-examination starts, ladies and gentlemen, I want to give you a particular instruction. As I said to you when we started this trial, I will instruct you on the law at the end of the case, but from time to time it is appropriate for specific instructions to be given, and this is one of those

90 1

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Avery-direct

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2 occasions. We had one earlier, I think.

3 In this trial, Mr. Lane stands accused by the
4 government of certain specific acts; namely, embezzlement
5 of moneys produced by the sale of food stamps, the
6 making of false statements on reports which were made to
7 the government with respect to the food stamp program,
8 and attempting to evade person income taxes for the years
9 1972, 1973 and 1974.

10 You have heard testimony from the past two
11 witnesses about certain acts of Mr. Lane which allegedly
12 occurred in connection with the robbery of the White Plains
13 store in March of 1974. Those particular acts of Mr. Lane,
14 in connection with that robbery and with particular
15 reference to what he told the police on different
16 occasions, are not, of course, the acts for which he is
17 charged in this indictment.

18 The acts that you have just heard evidence
19 about are other acts from the acts charged in the
20 indictment.

21 Now, there is an important rule of evidence
22 which I wish to call to your particular attention at this
23 time, although I will repeat it in my charge at the end
24 of the trial. The rule says this: "Evidence of other
25 acts is not admissible to prove the character of a person

1 in order to show that he acted in conformity therewith."

2
3 You must remember that very carefully. The
4 evidence of these particular acts of Mr. Lane in connection
5 with the robbery, if you accept that evidence and believe
6 it, is not admissible to prove his character. So that
7 you may then infer from character that he performed the
8 acts charged in the indictment. You must not consider
9 in that context.

10 The law simply does not permit the proof
11 of character by prior acts in order to permit a jury to
12 infer that certain entirely different acts were performed.
13 I am sure the common sense reason of that law will be
14 known to you. You cannot base a finding that certain
15 acts were done on the basis of character which are based
16 on other acts. But the law does permit evidence of other
17 acts, by which I mean acts other than acts charged in
18 the indictment, to be considered by triers of the fact,
19 if they wish to do so, for certain other limited purposes,
20 and those other limited purposes include motive,
21 opportunity, intent, preparation, plan, knowledge,
22 identity or absence of mistake or accident with respect to
23 the acts that are charged in the indictment.

24 You have heard a good deal of evidence about
25 the daily transaction sheets and the dummy figure and the

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Avery-direct

use the dummy figure played in the transaction sheets.
You may, if you wish, but you are not obliged to, consider the evidence you have heard about the dummy figure within the context of the robbery on the issues of opportunity or intent or absence or negating of mistake or improper use of the dummy figure or the transaction sheets within the context of the particular acts charged.

I am saying that you need not do so but you may if you wish consider the evidence you have heard about this particular transaction within the context of the acts charged and with particular reference to the dummy figure and the transaction sheets.

What you must not do, what you must not do is to consider the evidence that you have heard as demonstrating a character on the part of Mr. Lane which would then incline him to commit the wholly different acts with which he is charged.

I hope that is clear to you. I will repeat it again in my general charge, but with the evidence still fresh in your ears and before cross-examination took place, I wanted to instruct you particularly upon the limited and narrow use to which you may put this evidence, if you wish to.

All right.

rdse 91

law, your Honor, and then I will be prepared to say something to the Court and jury.

THE COURT: It would be appropriate, I take it, at this time to excuse the jury for the purpose of your applications?

MR. HEROLD: Yes, sir.

THE COURT: Ladies and gentlemen, we have reached a stage in the proceedings where it is necessary for counsel and the Court to consider questions of law. So I will ask you to retire to your little room again, if you will, please, and when we have something further to lay before you, I will let you know.

(Jury leaves the courtroom.)

MR. HEROLD: At this time with regard to the indictment against Harold Lane, I would respectfully move for a judgment of acquittal as to each and every count of the indictment pursuant to Rule 29 of the Federal Rules of Criminal Procedure on the basis there is not sufficient evidence before the Court and jury to sustain a conviction as to any or all of the counts to that indictment.

The last count of this indictment, number 26, accuses the defendant individually of evading income taxes, which count is based upon the theory of specific item method of proof, in that the Government alleges that from commis-

1 rdse 92

2 sions due from food stamps and from monies purportedly taken
3 by Harold Lane from the sale of food stamps, that he evaded
4 income taxes and owes a certain amount as a result of that
5 so-called income

6 This particular count of the indictment, your
7 Honor, I feel is related to the first count of the indictment
8 which alleges, in short, embezzlement by Harold Lane from
9 March of 1973 to November of 1975, of a sum of money in excess
10 of \$1 million, allegedly based on the sale of food stamp
11 coupons by Lane Check Cashing, Incorporated, a corporation
12 allegedly owned and operated by Mr. Lane.

13 It is my contention that there is no evidence
14 before this Court to indicate that Harold Lane, and he is
15 accused here, not Lane Check Cashing, Inc., and not anyone
16 else; there is no evidence here that Harold Lane converted
17 these monies, or in fact that he ever got them himself, or
18 that if he did get them, that he ever converted them to his
19 own use or to the use of anyone else, and that there is no
20 evidence to show that he did.

21 This trial, your Honor, is not one to determine
22 whether or not Lane Check Cashing as a corporation or Harold
23 Lane as an individual was a poor businessman. Mr. Lane had
24 very little to do with the day-to-day operations of this
25 business. This has been attested to by many of the witnesses

1 who testified during the course of the Government's case.
2
3 He had, in most instances, bookkeepers making some of the
4 entries in the various records and he had otherwise an
5 accountant who testified on behalf of the Government as to
6 other entries made in this particular case, as well as that
7 of the accountant testifying that the accountant performed
8 all of the tax responsibilities either individually for
9 Harold and Sandra Lane or for the corporate enterprises of
10 which Mr. Lane was a sole stockholder, prior to the years
11 1972, 1973 and 1974.

12 Harold Lane, as an individual or as a sole stock-
13 holder of any of the corporations that have been mentioned
14 here, was engaged in many, many businesses or projects, as
15 can be seen from the testimony. He did not have the over-
16 sight over Lane Check Cashing, Incorporated, which one might
17 have desired from a view of perfection, but that is not a
18 crime either. The criminal charges here, and these are
19 criminal charges, all deal, not just the first count of
20 embezzlement, but also the counts of filing false statements
21 and the tax counts as well, all deal with the words willingly
22 or knowingly or intentionally.

23 Consequently, there has to be a state of mind
24 proven sufficiently in this case to justify a conviction. I
25 don't think that any such state of mind has been proven suf-

1 rdse 94

App. 50 [1498]

2 ficiently to justify a conviction on the embezzlement count
3 and on that last tax count that I speak of. And I will
4 echo those same remarks when I deal with the filing of false
5 statements charges and when I deal with the other tax
6 counts as well.

7 First of all, as the Government did admit in
8 its opening comments to the jury, and has by the absence of
9 evidence, I think, in this case admitted, they don't know
10 where the money is, assuming any money was taken. And assum-
11 ing one step further that it was taken by Harold Lane, which
12 I think are two assumptions which, although I can make for
13 the purpose of argument, could never be made as a factual
14 basis on this record.

15 There is no tie, no connection, no nexis, no rope,
16 whatever you want to call it, between these monies and Harold
17 Lane. Not only was this a situation in which the day-to-day
18 operation was in the hands of any given number of individuals
19 other than Harold Lane, the daily transaction sheets that
20 were put before this Court were prepared by many, many others.
21 The cash receipts book was prepared by various bookkeepers,
22 the cash disbursements book was prepared by Mr. Lisker. Mr.
23 Lisker did most of the books and prior tax returns. There was
24 in this case a request from Mr. Lane for an audit, and I
25 don't think it is important to quibble over whether it was an

rdse 95

audit over monies or an audit over stamps, because a request for an audit here, no matter what type of audit actually came into play, would have, if done, and it was requested by Mr. Lane and there is no contradiction of that, would have or should have revealed the absence of monies that the Government now complains of, because there is a definite connection between stamps and money.

One cannot really balance the books, so to speak, without considering both.

Although the fund being talked about here might be a violation of some bank regulation, it does not appear, at least on this record, that it is a violation of some penal statute.

There are various references in this case, and it flows into all of the tax evasion charges as well, items of real property. Most of the real property which was obtained by Harold Lane individually in this case was obtained before 1973. Consequently, it cannot be said, and I am not saying there were not properties obtained in '73 or afterwards.

I think one may have been obtained in '73. The schedules that have been in evidence in the past few days will indicate it better.

With the fact as I believe it to be that the properties were mostly obtained in 1973 or prior to that year, the theory of the prosecution, which I believe in part

1 rdse 96

2 rests on the idea that the proceeds of the theft of the food
3 stamp monies were used to buy property or engage in other
4 businesses, fall flat. That may not be their entire theory
5 but certainly it is part of it.

6 (Continued on next page.)
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1 rmrf 1

App. 53 [1501]

2 US v
3 Harold Lane
4 '6 Cr. 0879
5 '31/77

(2:30 p.m.)

6 follows
7 DeSimone

8 All of the deeds, all the mortgages, all
9 the closing statements, all of the documentation which
10 has been introduced in evidence in this case was or is a
11 matter of public record and it shows the name of Harold
12 Lane individually.

13 What does that mean? That means that Harold
14 Lane was not trying to hide anything from anybody. There
15 he was, right out in the open, on the public record, buying
16 whatever pieces of property were involved in this case,
17 and not vet, or at least not vet at the end of 1973,
18 disposing of anything.

19 When confronted with the investigating authorities
20 from the Department of Agriculture and from IRS there
21 was no indication that he was resisting them, fleeing
22 them, trying to avoid them.

23 Harold Lane, as we know it from this evidence,
24 was a busy individual and involved in a lot of things,
25 and he told the investigating officers from IRS or from
the Department of Agriculture, "Look, I don't handle these
things day by day. Talk to my accountant. Only he
knows why the tax returns weren't filed. Ask him. I don't
do my own."

He permitted the Agriculture people to come to

1 rmrf 2

2 his various offices and get whatever records he had and,
3 sure, it is in the testimony that he couldn't prepare
4 1975 daily transaction sheets -- I believe that is what
5 the testimony is. Why? Because he said it wouldn't
6 balance and he had been questioning an audit for sometime
7 by then.

8 If he were really intent upon deceiving everybody,
9 as the Government would have us believe, then a guilty
10 individual would have been far better off to make up a whole
11 set of 1975 daily transaction sheets and just turn them
12 over rather than say, as he did, that he didn't make them,
13 "we couldn't work them out, we couldn't get them to balance."

14 What about this robbery in 1974 at the White
15 Plains store of Lane Check Cashing. When it is all said
16 and done, Lane Check Cashing files an insurance claim
17 for the exact amount of money which was stolen. The
18 Government was attempting to contend that originally the
19 police were told that the monies actually taken amounted
20 in the area of around \$23,000 in cash. That testimony
21 was based on two things, one, the recollection of
22 Detective Avery and Harriet Dolan of what was said over
23 the telephone and, two, a written statement signed by
24 Mr. Lane.

25 The written statement signed by Mr. Lane belied

rmrf 3

all of what had been testified before, because the words, "In cash" which were significant to the investigation that the White Plains Police Department were conducting were absent from that statement, and after that statement was given by Mr. Lane they didn't swear him in as to whether he told the truth, even though that notary signature or stamp and, "Sworn to," material appears on the bottom, and Detective Avery says, "No, I didn't swear him." I didn't even hear him read out loud that last sign of the statement, "I have read it over and swear it is the truth."

So that the false statement of March 1974 in the Government's own case falls flat and Mr. Lane files a proper insurance claim for the amount of cash stolen.

It was known by the bank, NBW, who dealt extensively with Lane Check Cashing through its principal officer, Mr. Lane, that loans would be used for other than Lane Check Cashing's business.

I submit, your Honor, that with regard to the charge of embezzlement and the charge of tax evasion which is substantially, if not wholly, based on the food stamp situation, that the Government has not proven evidence sufficient to sustain a conviction and there ought to be a judgment of acquittal entered by this Court.

1 rmrf 4

2 The 24th and 25th counts of this indictment are
3 income tax evasion counts based upon a theory of net worth
4 computation. We submit, your Honor, that that theory
5 falls apart because it is based upon evidence we believe
6 is insufficient to justify a conviction. The net worth
7 is not necessarily the same as taxable income and even
8 the Government's experts admitted that, and the Government's
9 experts admitted that a difference between net worth
10 one year and the next could come not always from taxable
11 income but could come from any number of sources, including
12 loans, loans which may be of record or loans which may not
13 be of record.

14 So then, your Honor, and here again intentionally,
15 willfully, knowingly, these words are important in these
16 tax counts as well, and I submit that what the Government
17 has submitted on these two tax counts, the 24th and 25th,
18 and the same could be just as easily true of the 26th,
19 is that Mr. Lisker was negligent or Mr. Lane was negligent
20 or the both of them were negligent, but this is a
21 criminal charge and if Mr. Lane was intent upon evading
22 taxes would he have done all of the talking and all of
23 the cooperating that he did do knowing he had the right to
24 have counsel, knowing he could refuse to answer, and yet
25 he is still talking, still answering, and still giving

1 rmrf 5

2 documents to the best of his ability?

3 THE COURT: Had these increases in net worth
4 resulted from a number of non-taxable sources, as your
5 argument appears to suggest, would he not during
6 these disclosures and conversations you called to my
7 attention, have mentioned them?

8 MR. HEROLD: I believe, your Honor, the testimony
9 of Mr. Suszynski on that area, which was I think in
10 relation to loans, if I recall it correctly -- I believe
11 Mr. Suszynski said, "Tell us about personal loans," and
12 those were the answers and that there was no inquiry
13 by Mr. Suszynski as to whether there were business loans --
14 not to him individually, but business loans to him in
15 any corporate status he may have had.

16 The remaining counts of the indictment, Nos.
17 2 through 23, deal with alleged false failing of statements,
18 and on these particular statements which are now in evidence
19 appears the signature of Mr. Lane. Some of these statements
20 were typewritten, that is, typewritten by Mattie Grady,
21 others were in the handwriting of Harold Lane and as far
22 as I recall the evidence, all were signed by Harold Lane.

23 We submit, your Honor, that even with regard to
24 the handwritten ones and most certainly as regards
25 those that were typewritten, that the sources of information

1 rmrf 6

2 in order to prepare these documents came from people like
3 Mattie Grady, who had kept the records all along, like
4 Harriet Dollan or Judith Dagq, and that all that Mr. Lane
5 who was not so knowledgeable about the day to day operation
6 of the business was doing was to take what was prepared
7 for him by others, even those involving his own handwriting,
8 because he would take it from the daily transaction sheets
9 that had been prepared by others, and affix his signature
10 to it.

11 This, to me, is not sufficient evidence that he
12 knew, assuming the contents were false, the contents
13 were false, and in the context of his denial or in the
14 context of his plea of not guilty, that he had nothing
15 whatsoever to do with food stamp monies, I don't think
16 it can be viewed that he had knowledge that food stamp
17 monies were not deposited or not stolen -- or stolen,
18 excuse me.

19 Consequently, your Honor, I feel that the element
20 of intent is also missing in the evidence involving these
21 false filing charges and with regard to all of these
22 charges, since the evidence doesn't unerringly point
23 to guilt and doesn't constitute sufficient evidence to
24 sustain a conviction, I would ask that a judgment of
25 acquittal be entered as to each and every count.

1 rmrf 7

App. 59 [1507]

2 That completes my application, your Honor.

3 THE COURT: Thank you, Mr. Herold.

4 MRS. HARRIS: Do you wish to hear from the
5 Government, your Honor?

6 THE COURT: The Government need not respond.
7 I had anticipated the making of such a motion at this
8 stage of the trial and I have paid close attention to the
9 evidence as it has come in and my function under Rule 29(a)
10 in response to a motion of this nature is to determine
11 whether or not the evidence is insufficient as a matter of
12 law to sustain a conviction on the counts in the indictment.

13 Much of the evidence that the Government has
14 offered in respect of all of the counts in the indictment
15 is circumstantial in nature. I agree with Mr. Herold
16 that in regard to important elements of each of the crimes
17 charged in the indictment, direct evidence is relatively
18 scarce but circumstantial evidence is rather considerable
19 and the law teaches us that circumstantial evidence
20 if credited by the jury is of equal value to direct evidence
21 and we are also aware, through our experience, that
22 there are certain crimes and certain necessary elements
23 of crimes, and I am thinking particularly of the necessary
24 element of intent or willful conduct, must in most cases
25 be proved by circumstantial rather than by direct evidence.

1 rmrf 8

App. 60 [1503]

2 Without usurping the function of the jury
3 as triers of the fact, I am satisfied, as a matter of law,
4 that in respect of each of the counts in the indictment
5 there is a sufficient combination of evidence, both direct
6 and circumstantial, to send the case to the jury.

7 Accordingly, I deny the application in respect
8 of each of the counts of the indictment.

9 I will call upon you, Mr. Herold, to advise
10 us at this time if the defendant is going forward with
11 proof in the case?

12 MR. HEROLD: In the presence of the Court and
13 in the presence of the jury, if need be, the defendant
14 rests.

15 THE COURT: Very well. Mr. Farley, we can
16 have the jury back in again, please.

17 (Jury present.)

18 THE COURT: The Government has rested its direct
19 case. Mr. Herold, does the defendant, Mr. Lane, desire
20 to offer any evidence?

21 MR. HEROLD: Defense rests.

22 THE COURT: Very well, both sides rest.

23 Ladies and gentlemen, I want to advise you further
24 about what happens next. The evidence in this case
25 is over. There are the following steps to be accomplished.

1 rmrf 52

App. 61 [1552]

2 request No. 7.

3 On defendant's request No. 8, the Government has
4 a comment, and it seems to lead us back into our discussion
5 of willfulness.

6 MRS. HARRIS: Yes, I think we have been through
7 this.

8 THE COURT: I will simply adhere to my prior
9 rulings on how that topic is going to be handled throughout
10 and I will mark defendant's request No. 8 as granted
11 as charged.

12 MR. HEROLD: There is one other area, your
13 Honor, unless we are going to the supplemental requests --
14 it is a supplemental request I have, but not in writing,
15 which deals with the last three counts of the indictment,
16 24, 25 and 26, which charge the felony of income tax
17 evasion. I would ask the Court to consider charging the jury
18 of the lesser included count, or what I believe to be a
19 lesser included count of failure to file income taxes
20 under section, I believe, 7203, Title 26, which is a mis-
21 demeanor.

22 THE COURT: 26 United States Code --

23 MR. HEROLD: Section 7203.

24 THE COURT: You request a charge as to the lesser
25 offense?

1 rmrf 53

App. 62 [1553]

2 MR. HEROLD: Yes, sir.

3 THE COURT: Mrs. Harris?

4 MRS. HARRIS: Well, I object to it, your Honor.

5 My problem here is that I am not sure whether or not the
6 defendant requests it, he is entitled to it, and I
7 clearly am not going to object if the law is he is entitled
8 to it. From my standpoint, from the Government's standpoint,
9 it is not a charge that we would want. I think it is fair
10 to say that failure to file is a lesser included charge
11 in relation to the 7201 charge of an attempt to evade.

12 THE COURT: The question which arises, if that is
13 true, is not the defendant entitled to a charge on the lesser
14 offense. Do you have any authority for me, Mr. Herold,
15 showing that your client is entitled to this charge?

16 MR. HEROLD: No, I don't, your Honor. It
17 developed late in the case. In fact, it awaited until after
18 the completion of the Government's case before I could even
19 consider making it. If need be, I might be able to get some
20 by tomorrow morning.

21 THE COURT: I am just looking quickly at the
22 head notes and the cases seem to go in different directions.

23 Researching this quickly, the Supreme Court
24 seems to have said in Sansone, versus United States, 380 U.S.
25 343, and it was a tax prosecution, the petitioner was

1 rmrf 54

App. 63 [554]

2 indicted for willfully attempting to evade federal income
3 taxes in violation of 26 U.S. Code Section 7201 --
4 is that the one we have?

5 MRS. HARRIS: That would be the charge here,
6 your Honor.

7 THE COURT: At the end of his trial he requested
8 that the jury be instructed that it could acquit him of
9 that offense, a felony, but could convict him of the lesser
10 included misdemeanors of willfully filing a fraudulent
11 or false return in violation of Section 7207 or willfully
12 failing to pay his taxes when due in violation of Section
13 7203. The request was denied, petitioner found guilty,
14 Court of Appeals upheld the conviction, Supreme Court
15 affirmed, and according to the head notes, the Court said,
16 "Since Section 7207 applies to income tax violations
17 as Section 7201 and 7203 clearly do, with obvious overlapping
18 among them, the lesser included offense doctrine would be
19 applicable in an appropriate case."

20 Well, that's going your way so far, Mr. Herold.
21 Paragraph 2 says, "A lesser included offense instruction
22 is proper only where the charged greater offense requires
23 that the jury find a disputed factual element which is
24 not a requisite for conviction of the lesser included
25 offense."

1 rmrf 55

2 I always have to read something like that two
3 or three times.

4 MRS. HARRIS: Out loud, please.

5 THE COURT: Section 3 says, "There were here no
6 disputed issues of fact which would justify instructions
7 to the jury that it could find that petitioner had committed
8 all the elements of Section 7203 and Section 7207 without
9 having violated Section 7201 and so petitioner was not
10 entitled to lesser included offense instructions."

11 Now, what are they saying there? Go back to
12 Section 2, "A lesser included offense instruction is proper
13 only where the charged greater offense requires that the jury
14 find a disputed factual element which is not a requisite
15 for conviction of the lesser included offense."

16 They seem to be saying that if on the lesser
17 included offense the Government has to prove X and Y
18 but for the greater offense the Government has to prove X,
19 Y and Z, a lesser included offense charge is appropriate,
20 but if the elements are the same on both the lesser charge
21 and the greater charge, a lesser included offense charge
22 is not appropriate and the defendant in Sansone was held
23 not entitled to the charge. Why? According to the head
24 notes, because, "There were here no disputed issues of
25 fact which would justify instructions to the jury that it

1 rmrf 56

2 could find the petitioner had committed all of the elements
3 of Section 7203 and Section 7207 without having violated
4 Section 7201."

5 I think that is what they are saying, at least
6 in that case. The question then arises whether we have
7 a complete overlapping of elements between 7203 and 7201.

8 My present inclination, Mr. Herold, if I understand
9 Sansone correctly and if it is still the law, I don't think
10 your request is well taken, but I will certainly accept
11 some further research and argument on the first thing
12 in the morning before I charge the jury. I appreciate
13 it is 5:00 o'clock now. I think Sansone is against you.

14 MR. HEROLD: Your Honor, I think that very
15 probably by tomorrow morning, on the train ride to and from,
16 I will have the opportunity.

17 THE COURT: There is a good law library on the
18 train?

19 MR. HEROLD: I carry it with me. It is not a good
20 one, but it is the best I can carry with me.

21 MRS. HARRIS: I will certainly look into the
22 matter as well, your Honor.

23 THE COURT: I think we should all think about
24 this further.

25 Anything further?

App. 66 [1558]

1 rmlk 1

2 UNITED STATES OF AMERICA,

3 -vs.-

4 HAROLD LANE

5 February 1, 1977

6
7 (In the robing room.)

8 THE COURT: I have given some further consideration
9 to defendant's request for a charge on the lesser offense
10 under the Tax Laws involving Section 7203. Do counsel
11 have any further submissions on that?

12 MR. HEROLD: Not in terms of cases, your Honor.
13 Basically the theory upon which I submit this is that the
14 charge of willfully attempting to evade or defeat a
15 particular tax is one that includes the act of actually
16 not making the return itself or filing a return and,
17 consequently, I think you can not commit the greater crime
18 without having also committed the lesser crime and since
19 it is possible, at least upon what I feel the evidence is,
20 for the jury to not find Mr. Lane guilty of the greater
21 offense but find him guilty of a lesser offense, the willful
22 failure to file a tax return, although I don't feel there
23 is enough evidence, but I feel the evidence is such that
24 it could permit such a finding, I feel that they should be
25 given what I feel is a lesser included crime, that you can

1 rmlk 2

2 not do one without the other. Since that is possible under
3 the evidence, I feel should should have that option.

4 THE COURT: Mrs. Harris?

5 MRS. HARRIS: Last night I took a look at
6 another case, United States against Bishop, 412,346, and
7 Bishop makes clear that the element of willfulness in the
8 failure to file statute, that is 7203, and the element of
9 willfulness in the tax evasion statute, 7201, is the
10 same kind of willfulness. The only difference between
11 what the Government has to prove with respect to a failure
12 to file, then, and a tax evasion charge, would be the
13 additional element in the tax evasion charge of some
14 affirmative act of showing or evidencing an intent to
15 evade.

16 The Government's evidence here with respect to
17 willfulness and intent to evade, in the tax evasion charge,
18 is really the same evidence. It comes down to the way that
19 defendant was keeping his books and conducting his business,
20 we say in order to conceal the true nature of his trans-
21 actions. I will repeat that point again: With respect
22 to both willfulness and the intent to evade for the
23 tax evasion charges, we are relying on essentially the
24 same evidence. I said that yesterday too. That same
25 willfulness evidence would be the kind of evidence we

1 rmlk 3

2 would rely upon if we were dealing with a failure to file
3 charge.

4 As I read Sansone, which we discussed yesterday,
5 in a circumstance such as this where the contested issues
6 of fact, and I am assuming here that the contested issues
7 of fact go to willfulness, if there are contested issues
8 with respect to the tax evasion charge which, if the jury
9 found for the defendant they could still find he failed to
10 file, then he has a right to the failure to file, lesser
11 included charge.

12 It seems to me that Sansone says also, and that
13 is what happened in that case, that if the contested issues
14 of fact are such that if the jury acquitted on the tax
15 evasion charge, that is, if they found those facts
16 in favor of the defendant, there is nothing left for them
17 to find willfulness on with respect to the lesser included
18 charge.

19 Am I making sense?

20 THE COURT: Yes, are you making sense, at least
21 to the extent that it seems to me you are correctly reading
22 and applying the Supreme Court decisions you have cited and
23 it is not for me to say that the Supreme Court is not making
24 sense. I have further considered the Sansone case and,
25 like you, I discovered United States versus Bishop, which

1 rmlk 4

App. 69 [1561]

2 cites and applies and explains Sansone.

3 I am going to deny the request for the charge
4 on a lesser offense, Mr. Herold, and I do so because it
5 seems to me that on the evidence of this case the question
6 of willfulness within the Section 7201 context and the
7 7203 context is exactly the same.

8 There is evidence in the record of undisputed
9 affirmative acts from which the jury could, if it wishes,
10 infer willfulness under 7201 -- it need not do so, but it
11 can do so. If it does infer willfulness from these acts
12 within the 7201 context, it is making the same kind of
13 finding in respect of willfulness which would underlie a
14 charge under 7203 and the teaching of Sansone and Bishop,
15 as I understand them, is that in such a situation it is
16 not appropriate to include the lesser offense in the charge.

17 So in reliance on those two cases and on the
18 record of this case as I perceive it to be, I am not going
19 to include the lesser offense in the charge, and you may
20 be guided accordingly.

21 Is there anything else before we start the
22 summations?

23 MR. HEROLD: I don't believe so, your Honor.

24 (In open court, jury present.)

25 THE COURT: Good morning, jurors. Good morning,

1 rmlk 101

2 THE COURT: Very well.

3 MRS. HARRIS: Ladies and gentlemen, I am not
4 going to take a long time here and I am not going to repeat
5 what I said in my opening summations, which took a great
6 deal of your time.

7 I am certain that you heard me then and I am
8 certain that the things that I said them about the man's
9 contacts with his business and the evidence that came from
10 that stand about the man's contacts with his business,
11 is extremely clear here, and I would simply point out to
12 you that witnesses came who were with the place in 1973, '74
13 and '75, and they gave you the picture of things in each
14 of those years. I will not go any further, there is no
15 question about the fact that this man was into his businesses
16 constantly.

17 I do want to address myself to this matter of
18 all this openness and all this cooperation that Mr. Herold
19 has been talking with you about.

20 First of all, I would just want to say remember
21 that what you are dealing with here is evidence in this
22 case, evidence that you have heard from that witness stand
23 and evidence and documents that are marked in evidence, not
24 the imaginations of either myself or Mr. Herold with respect
25 to what could have been said, what might have been said,

1 rmlk 102

2 what may be out there in documents someplace that have not
3 been brought into this courtroom by the defense case here.

4 You know the efforts that the Government has
5 made to bring documents in to you. What I am saying is to
6 base your determinations on what you see here, not on the
7 fertile imaginations of either one of us.

8 Why is it that Mr. Lane sometimes, and he does,
9 talked with certain representatives of the Government?
10 The evidence here is that he didn't talk all that much with
11 certain representatives of the Government. He talked with
12 Agent Suszynski. He indicated, for instance, to Agent
13 Suszynski that he didn't have any non-taxable sources of
14 income. So that you are free to infer here that the increase
15 in his net worth was from taxable sources of income. There
16 has been no other evidence from this witness stand that
17 there is any new information with respect to that.

18 He did talk with Joe Ohnmeiss when he said that
19 he bought his payments for the Federal Reserve Bank at the
20 National Bank of Westchester everytime. But beyond that,
21 let's look at this cooperation, let's look at this proposition
22 that he is not hiding anything.

23 He had a duty, like everyone else, to file an
24 income tax return in 1972 and '73 and '74 setting forth all
25 of these facts that you see spread around here in charts and

App. 72 [1668]

1 rmlk 111

2 together and I have one more thing to say: Did you notice
3 in Mr. Herold's summation that not once -- not once -- did
4 he talk about this blank at the Federal Reserve Bank or
5 this blank space at the National Bank of Westchester, or
6 this work over here at the Federal Reserve Bank and this
7 work here at the National Bank of Westchester (indicating).

8 The point here is really very simple: The
9 money was not deposited. Harold Lane was responsible for
10 depositing the money, not just because he was president of
11 all these companies, but because he is the one who had the
12 documents and he signed the #250 reports, and he did sign
13 every #250 report. The #250 reports were false, the money
14 is gone, and I believe that the evidence in this case has
15 demonstrated to you how it went out and why, and that was
16 to keep Mr. Lane's businesses going.

17 I think we have proved it beyond a reasonable
18 doubt and I leave the matter in your good hands. I am
19 confident that you will do justice in this case.

20 THE COURT: We will take a brief recess at this
21 time and then I will give the jury my charge on the law.

22 (Jury leaves the courtroom.)

23 MR. HEROLD: Your Honor, I had an application.

24 THE COURT: Go ahead.

25 MR. HEROLD: I can not quote Mrs. Harris verbatim,

App. 73 [1663]

1 rmlk 112

2 but in her rebuttal remarks she made a general reference
3 at the very beginning to whether or not certain things had
4 been brought in in the defense case. I can not recall her
5 remarks verbatim, as I say, and then at the tail end of her
6 remarks just now she alluded to the fact that at no time
7 did I refer to certain matters or certain spaces, empty
8 spaces, on the various summary charts in evidence, and I
9 think the combination of those two statements during the
10 course of her rebuttal remarks was to say that the defendant
11 has some sort of an obligation to respond to everything and
12 that if he didn't put in a defense case or does not respond
13 to certain portions of the prosecution case that he has not
14 sustained a burden of proving something and I think that
15 is crossing over the line of who has the burden in this
16 case and, in effect, is arguing that the defendant failed
17 to prove something or failed to bring forth evidence,
18 whether it be documentary, testimonial, or whatever, and
19 consequently, your Honor, on that basis I feel that the
20 summation of the Government in those records was prejudicial
21 to my client and deprived him a a fair trial and consequently
22 I would ask for a mistrial.

23 THE COURT: It is a fact that in the speech in
24 rebuttal the phrase "defense case" was used. However,
25 my own recollection is that that phrase immediately followed

1 rmlk 113

2 a fair, in my judgment, reference to the closing summation
3 of counsel for the defendant.

4 My own belief is that the jury would interpret
5 the phrase "defense case" as I interpreted it, namely, the
6 case for the defendant put forward in the closing summation.
7 I think that the same characterization can be made with
8 respect to the remarks at the end of the rebuttal speech
9 about the blank spaces on the charts. If there is any
10 lingering basis for concern that the jury may misapprehend
11 the nature of the duty or obligation falling upon the
12 defendant in a case of this nature, and I don't think there
13 is substantial grounds for concern, I propose to deal with
14 the subject in some detail in my charge to the jury.

15 My own conclusion, Mr. Herold, is that the charge
16 I will give to the jury on the points of the Government's
17 burden and the defendant's rights and the presumption of
18 innocence in his favor and the absence of any requirement
19 in law that he go forward with any case at all or prove
20 anything will more than overcome whatever prejudice may
21 arise from the remarks to which you direct my attention,
22 prejudice which in my own judgment, to the extent that it
23 exists at all, is minimal.

24 Consequently, I deny the application.

25 (Recess.)

1 rmjb 46

2 counts in the indictment.

3 I have refrained from any attempt to summarize the
4 evidence in this case, largely because counsel in their
5 summations have thoroughly reviewed the evidence and ad-
6 vanced their contention with respect thereto. You have
7 also, I am satisfied, followed the evidence carefully.
8 An effort on my part to summarize it again would only be
9 repetitious. You must, of course, consider all the evi-
10 dence and exhibits in the case; all are important. I
11 wish to make a number of additional points about the evi-
12 dence you have heard. You have heard testimony by
13 Agriculture and IRS agents that Mr. Lane made statements
14 to them about this case. If you find he did make the
15 statements, you may give these statements such weight as
16 you believe they deserve after considering all the circum-
17 stances which were brought out. You have heard evidence
18 about certain prior acts of Mr. Lane in the conduct of his
19 business not directly connected to the crimes charged in
20 the indictment. I refer, for example, to the events
21 attendant upon the robbery at the White Plains store in
22 March of 1974 and to the dealings involving American
23 Express Company. I charge you particularly that Mr. Lane
24 is on trial for certain specific acts. His general char-
25 acter is not on trial, his manner of conducting business

rmjb 47

1 as a general proposition is not on trial. You may not in
2 law consider these prior acts as revealing anything about
3 Mr. Lane's character and then draw a further inference as
4 to whether or not he was likely to commit the crimes
5 charged. Such prior acts may be considered by you only
6 to the extent, if any, that they tend to show factors
7 relevant to certain of the crimes charged, factors such
8 as opportunity or motive to commit those crimes or an
9 inconsistency with an innocent explanation of certain
10 activities.
11

12 In suggesting such possible considerations I
13 do not for a moment suggest that you should find them to
14 be present. That's not my function; it is entirely up to
15 you. I am simply charging you that evidence of prior acts
16 has a narrow and limited purpose in the law in relation
17 to the acts charged. You must ~~not~~ consider those acts as
18 reflecting anything about Mr. Lane's character because
19 character studies are not admissible in law to sustain
20 conviction on a criminal charge. If in this charge I have
21 made any reference to particular evidence in the case and
22 if my statement is not in accord with your own recollection
23 of the testimony, you will disregard my statements and
24 depend entirely upon your own recollection of the evidence
25 which governs at all times.

1 rmrf 55

2 I always have to read something like that two
3 or three times.

4 MRS. HARRIS: Out loud, please.

5 THE COURT: Section 3 says, "There were here no
6 disputed issues of fact which would justify instructions
7 to the jury that it could find that petitioner had committed
8 all the elements of Section 7203 and Section 7207 without
9 having violated Section 7201 and so petitioner was not
10 entitled to lesser included offense instructions."

11 Now, what are they saying there? Go back to
12 Section 2, "A lesser included offense instruction is proper
13 only where the charged greater offense requires that the jury
14 find a disputed factual element which is not a requisite
15 for conviction of the lesser included offense."

16 They seem to be saying that if on the lesser
17 included offense the Government has to prove X and Y
18 but for the greater offense the Government has to prove X,
19 Y and Z, a lesser included offense charge is appropriate,
20 but if the elements are the same on both the lesser charge
21 and the greater charge, a lesser included offense charge
22 is not appropriate and the defendant in Sansone was held
23 not entitled to the charge. Why? According to the head
24 notes, because, "There were here no disputed issues of
25 fact which would justify instructions to the jury that it

1 rmrf 56

2 could find the petitioner had committed all of the elements
3 of Section 7203 and Section 7207 without having violated
4 Section 7201."

5 I think that is what they are saying, at least
6 in that case. The question then arises whether we have
7 a complete overlapping of elements between 7203 and 7201.

8 My present inclination, Mr. Herold, if I understand
9 Sansone correctly and if it is still the law, I don't think
10 your request is well taken, but I will certainly accept
11 some further research and argument on the first thing
12 in the morning before I charge the jury. I appreciate
13 it is 5:00 o'clock now. I think Sansone is against you.

14 MR. HEROLD: Your Honor, I think that very
15 probably by tomorrow morning, on the train ride to and from,
16 I will have the opportunity.

17 THE COURT: There is a good law library on the
18 train?

19 MR. HEROLD: I carry it with me. It is not a good
20 one, but it is the best I can carry with me.

21 MRS. HARRIS: I will certainly look into the
22 matter as well, your Honor.

23 THE COURT: I think we should all think about
24 this further.

25 Anything further?

App. 66 [1558]

1 rmlk 1

2 UNITED STATES OF AMERICA,

3 -vs.-

4 HAROLD LANE

5 February 1, 1977

6
7 (In the robing room.)

8 THE COURT: I have given some further consideration
9 to defendant's request for a charge on the lesser offense
10 under the Tax Laws involving Section 7203. Do counsel
11 have any further submissions on that?

12 MR. HEROLD: Not in terms of cases, your Honor.
13 Basically the theory upon which I submit this is that the
14 charge of willfully attempting to evade or defeat a
15 particular tax is one that includes the act of actually
16 not making the return itself or filing a return and,
17 consequently, I think you can not commit the greater crime
18 without having also committed the lesser crime and since
19 it is possible, at least upon what I feel the evidence is,
20 for the jury to not find Mr. Lane guilty of the greater
21 offense but find him guilty of a lesser offense, the willful
22 failure to file a tax return, although I don't feel there
23 is enough evidence, but I feel the evidence is such that
24 it could permit such a finding, I feel that they should be
25 given what I feel is a lesser included crime, that you can

1 rmlk 2

2 not do one without the other. Since that is possible under
3 the evidence, I feel should should have that option.

4 THE COURT: Mrs. Harris?

5 MRS. HARRIS: Last night I took a look at
6 another case, United States against Bishop, 412,346, and
7 Bishop makes clear that the element of willfulness in the
8 failure to file statute, that is 7203, and the element of
9 willfulness in the tax evasion statute, 7201, is the
10 same kind of willfulness. The only difference between
11 what the Government has to prove with respect to a failure
12 to file, then, and a tax evasion charge, would be the
13 additional element in the tax evasion charge of some
14 affirmative act of showing or evidencing an intent to
15 evade.

16 The Government's evidence here with respect to
17 willfulness and intent to evade, in the tax evasion charge,
18 is really the same evidence. It comes down to the way that
19 defendant was keeping his books and conducting his business,
20 we say in order to conceal the true nature of his trans-
21 actions. I will repeat that point again: With respect
22 to both willfulness and the intent to evade for the
23 tax evasion charges, we are relying on essentially the
24 same evidence. I said that yesterday too. That same
25 willfulness evidence would be the kind of evidence we

1 rmlk 3

2 would rely upon if we were dealing with a failure to file
3 charge.

4 As I read Sansone, which we discussed yesterday,
5 in a circumstance such as this where the contested issues
6 of fact, and I am assuming here that the contested issues
7 of fact go to willfulness, if there are contested issues
8 with respect to the tax evasion charge which, if the jury
9 found for the defendant they could still find he failed to
10 file, then he has a right to the failure to file, lesser
11 included charge.

12 It seems to me that Sansone says also, and that
13 is what happened in that case, that if the contested issues
14 of fact are such that if the jury acquitted on the tax
15 evasion charge, that is, if they found those facts
16 in favor of the defendant, there is nothing left for them
17 to find willfulness on with respect to the lesser included
18 charge.

19 Am I making sense?

20 THE COURT: Yes, are you making sense, at least
21 to the extent that it seems to me you are correctly reading
22 and applying the Supreme Court decisions you have cited and
23 it is not for me to say that the Supreme Court is not making
24 sense. I have further considered the Sansone case and,
25 like you, I discovered United States versus Bishop, which

1 rmlk 4

App. 69 [1561]

2 cites and applies and explains Sansone.

3 I am going to deny the request for the charge
4 on a lesser offense, Mr. Herold, and I do so because it
5 seems to me that on the evidence of this case the question
6 of willfulness within the Section 7201 context and the
7 7203 context is exactly the same.

8 There is evidence in the record of undisputed
9 affirmative acts from which the jury could, if it wishes,
10 infer willfulness under 7201 -- it need not do so, but it
11 can do so. It if does infer willfulness from these acts
12 within the 7201 context, it is making the same kind of
13 finding in respect of willfulness which would underlie a
14 charge under 7203 and the teaching of Sansone and Bishop,
15 as I understand them, is that in such a situation it is
16 not appropriate to include the lesser offense in the charge.

17 So in reliance on those two cases and on the
18 record of this case as I perceive it to be, I am not going
19 to include the lesser offense in the charge, and you may
20 be guided accordingly.

21 Is there anything else before we start the
22 summations?

23 MR. HEROLD: I don't believe so, your Honor.

24 (In open court, jury present.)

25 THE COURT: Good morning, jurors. Good morning,

1 rmlk 101

2 THE COURT: Very well.

3 MRS. HARRIS: Ladies and gentlemen, I am not
4 going to take a long time here and I am not going to repeat
5 what I said in my opening summations, which took a great
6 deal of your time.

7 I am certain that you heard me then and I am
8 certain that the things that I said then about the man's
9 contacts with his business and the evidence that came from
10 that stand about the man's contacts with his business,
11 is extremely clear here, and I would simply point out to
12 you that witnesses came who were with the place in 1973, '74
13 and '75, and they gave you the picture of things in each
14 of those years. I will not go any further, there is no
15 question about the fact that this man was into his businesses
16 constantly.

17 I do want to address myself to this matter of
18 all this openness and all this cooperation that Mr. Herold
19 has been talking with you about.

20 First of all, I would just want to say remember
21 that what you are dealing with here is evidence in this
22 case, evidence that you have heard from that witness stand
23 and evidence and documents that are marked in evidence, not
24 the imaginations of either myself or Mr. Herold with respect
25 to what could have been said, what might have been said,

1 rmlk 102

2 what may be out there in documents someplace that have not
3 been brought into this courtroom by the defense case here.

4 You know the efforts that the Government has
5 made to bring documents in to you. What I am saying is to
6 base your determinations on what you see here, not on the
7 fertile imaginations of either one of us.

8 Why is it that Mr. Lane sometimes, and he does,
9 talked with certain representatives of the Government?
10 The evidence here is that he didn't talk all that much with
11 certain representatives of the Government. He talked with
12 Agent Suszynski. He indicated, for instance, to Agent
13 Suszynski that he didn't have any non-taxable sources of
14 income. So that you are free to infer here that the increase
15 in his net worth was from taxable sources of income. There
16 has been no other evidence from this witness stand that
17 there is any new information with respect to that.

18 He did talk with Joe Ohnmeiss when he said that
19 he bought his payments for the Federal Reserve Bank at the
20 National Bank of Westchester everytime. But beyond that,
21 let's look at this cooperation, let's look at this proposition
22 that he is not hiding anything.

23 He had a duty, like everyone else, to file an
24 income tax return in 1972 and '73 and '74 setting forth all
25 of these facts that you see spread around here in charts and

rmlk 111

together and I have one more thing to say: Did you notice in Mr. Herold's summation that not once -- not once -- did he talk about this blank at the Federal Reserve Bank or this blank space at the National Bank of Westchester, or this work over here at the Federal Reserve Bank and this work here at the National Bank of Westchester (indicating).

The point here is really very simple: The money was not deposited. Harold Lane was responsible for depositing the money, not just because he was president of all these companies, but because he is the one who had the documents and he signed the #250 reports, and he did sign every #250 report. The #250 reports were false, the money is gone, and I believe that the evidence in this case has demonstrated to you how it went out and why, and that was to keep Mr. Lane's businesses going.

I think we have proved it beyond a reasonable doubt and I leave the matter in your good hands. I am confident that you will do justice in this case.

THE COURT: We will take a brief recess at this time and then I will give the jury my charge on the law.

(Jury leaves the courtroom.)

MR. HEROLD: Your Honor, I had an application.

THE COURT: Go ahead.

MR. HEROLD: I can not quote Mrs. Harris verbatim,

APR 73 [1869]

1 rmlk 112

2 but in her rebuttal remarks she made a general reference
3 at the very beginning to whether or not certain things had
4 been brought in in the defense case. I can not recall her
5 remarks verbatim, as I say, and then at the tail end of her
6 remarks just now she alluded to the fact that at no time
7 did I refer to certain matters or certain spaces, empty
8 spaces, on the various summary charts in evidence, and I
9 think the combination of those two statements during the
10 course of her rebuttal remarks was to say that the defendant
11 has some sort of an obligation to respond to everything and
12 that if he didn't put in a defense case or does not respond
13 to certain portions of the prosecution case that he has not
14 sustained a burden of proving something and I think that
15 is crossing over the line of who has the burden in this
16 case and, in effect, is arguing that the defendant failed
17 to prove something or failed to bring forth evidence,
18 whether it be documentary, testimonial, or whatever, and
19 consequently, your Honor, on that basis I feel that the
20 summation of the Government in those records was prejudicial
21 to my client and deprived him a a fair trial and consequently
22 I would ask for a mistrial.

23 THE COURT: It is a fact that in the speech in
24 rebuttal the phrase "defense case" was used. However,
25 my own recollection is that that phrase immediately followed

1 rmlk 113

2 a fair, in my judgment, reference to the closing summation
3 of counsel for the defendant.

4 My own belief is that the jury would interpret
5 the phrase "defense case" as I interpreted it, namely, the
6 case for the defendant put forward in the closing summation.
7 I think that the same characterization can be made with
8 respect to the remarks at the end of the rebuttal speech
9 about the blank spaces on the charts. If there is any
10 lingering basis for concern that the jury may misapprehend
11 the nature of the duty or obligation falling upon the
12 defendant in a case of this nature, and I don't think there
13 is substantial grounds for concern, I propose to deal with
14 the subject in some detail in my charge to the jury.

15 My own conclusion, Mr. Herold, is that the charge
16 I will give to the jury on the points of the Government's
17 burden and the defendant's rights and the presumption of
18 innocence in his favor and the absence of any requirement
19 in law that he go forward with any case at all or prove
20 anything will more than overcome whatever prejudice may
21 arise from the remarks to which you direct my attention,
22 prejudice which in my own judgment, to the extent that it
23 exists at all, is minimal.

24 Consequen' , , deny the application.

25 (Recess)

1 rmjb 46

2 counts in the indictment.

3 I have refrained from any attempt to summarize the
4 evidence in this case, largely because counsel in their
5 summations have thoroughly reviewed the evidence and ad-
6 vanced their contention with respect thereto. You have
7 also, I am satisfied, followed the evidence carefully.
8 An effort on my part to summarize it again would only be
9 repetitious. You must, of course, consider all the evi-
10 dence and exhibits in the case; all are important. I
11 wish to make a number of additional points about the evi-
12 dence you have heard. You have heard testimony by
13 Agriculture and IRS agents that Mr. Lane made statements
14 to them about this case. If you find he did make the
15 statements, you may give these statements such weight as
16 you believe they deserve after considering all the circum-
17 stances which were brought out. You have heard evidence
18 about certain prior acts of Mr. Lane in the conduct of his
19 business not directly connected to the crimes charged in
20 the indictment. I refer, for example, to the events
21 attendant upon the robbery at the White Plains store in
22 March of 1974 and to the dealings involving American
23 Express Company. I charge you particularly that Mr. Lane
24 is on trial for certain specific acts. His general char-
25 acter is not on trial, his manner of conducting business

rmjb 47

1 as a general proposition is not on trial. You may not in
2 law consider these prior acts as revealing anything about
3 Mr. Lane's character and then draw a further inference as
4 to whether or not he was likely to commit the crimes
5 charged. Such prior acts may be considered by you only
6 to the extent, if any, that they tend to show factors
7 relevant to certain of the crimes charged, factors such
8 as opportunity or motive to commit those crimes or an
9 inconsistency with an innocent explanation of certain
10 activities.
11

12 In suggesting such possible considerations I
13 do not for a moment suggest that you should find them to
14 be present. That's not my function; it is entirely up to
15 you. I am simply charging you that evidence of prior acts
16 has a narrow and limited purpose in the law in relation
17 to the acts charged. You must ~~not~~ consider those acts as
18 reflecting anything about Mr. Lane's character because
19 character studies are not admissible in law to sustain
20 conviction on a criminal charge. If in this charge I have
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23 of the testimony, you will disregard my statements and
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25 which governs at all times.

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U. S. ATTORNEY
SO. DIST. OF N. Y.